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BEFORE THE ARIZONA CORPORATION COMMISSION

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2017 MAY 12 P 3:14

Arizona Corporation Commission

DOCKETED

MAY 12 2017

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**COMMISSIONERS**

**TOM FORESE – CHAIRMAN**

**ROBERT BURNS**

**DOUG LITTLE**

**ANDY TOBIN**

**BOYD DUNN**

IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR A HEARING TO  
DETERMINE THE FAIR VALUE OF THE  
UTILITY PROPERTY OF THE COMPANY  
FOR RATEMAKING PURPOSES, TO FIX A  
JUST AND REASONABLE RETURN  
THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

IN THE MATTER OF FUEL AND  
PURCHASED POWER PROCUREMENT  
AUDITS FOR ARIZONA PUBLIC SERVICE  
COMPANY

DOCKET NO. E-01345A-16-0123

**NOTICE OF INSUFFICIENCY OF  
APS AND PINNACLE WEST  
RESPONSES TO COMMISSIONER  
BURNS' QUESTIONS**

Arizona Public Service Company's ("APS") responses to Arizona Corporation  
Commissioner Robert Burns' questions, filed on May 4, 2017, are wholly inadequate and fail  
to comply with the information rightfully sought in this proceeding and required before the  
Commission can make an appropriate assessment of the rate request from APS. Of the thirty-

1 eight questions Commissioner Burns provided to APS/Pinnacle West, APS answered but 6<sup>1</sup>,  
2 and even on those it offered no complete responses. Pinnacle West Capital Corporation  
3 (Pinnacle West") answered none of the questions. APS's objections are also misguided,  
4 legally meritless, and inappropriate. And, APS and Pinnacle West have not offered a sworn  
5 answer to any of Commissioner Burns' questions and have failed to provide all the witnesses  
6 required to answer Commissioner Burns' questions under oath, even hiding behind assertions  
7 by the answering official that she does not have the information requested.

8 The knowing and intentional refusal of APS and its parent to answer questions the  
9 Commissioners, and particularly Commissioner Burns, are legally authorized to inquire about  
10 and Pinnacle West and APS are legally obligated to supply, and to provide the witnesses he  
11 needs for examination on such questions, demonstrates just why the Administrative Law Judge  
12 must grant the relief Commissioner Burns has requested the Emergency Motion of  
13 Commissioner Robert Burns for Relief (1) Confirming that the Administrative Law Judge Will  
14 Facilitate Calling and Questioning of Hearing Witnesses; and (2) Approval of His Counsel  
15 Participating in Questioning (the "Motions"). The open refusal of APS and Pinnacle West to  
16 allow further disclosure about their financial support of other Commissioners' election  
17 campaigns also justifies even greater suspicions that compel the relief Commissioner Burns  
18 seeks in Commissioner Burns' Motion for Determination of Disqualification and for Stay of  
19 Proceedings Pending Full Investigation.

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24 <sup>1</sup> In the six questions answered, APS failed to provide sufficient and responsive information,  
25 thus Commissioner Burns likewise provides notice of their deficiencies. Answer 6 failed to  
26 describe in detail how each of the requested forward-looking statements are developed or  
27 calculated. Answer 20 responded partially to only to one of the eight subsections, notably not  
28 answering questions regarding campaign or election expenditures, or contributions related to  
charitable donations or political activities. Answers 31-32 only disclaim knowledge for Ms.  
Lockwood and do not provide a substantive response.

1 **I. The ACC and Commissioner Burns have the Authority and the Obligation to**  
2 **Thoroughly Vet the Information Provided in Support of a Rate-Increase Request**  
3 **to Protect Arizona Consumers from Improper Increases and Expenditures.**

4 APS concedes, "it is customary for Commissioners to ask questions of witnesses  
5 during the course of a hearing before the Commission [and] if a Commissioner does not  
6 receive the information that they need, they may not be able to vote in favor [or against] the  
7 relief requested." Objection at 2:6-9. Thus, APS/Pinnacle West acknowledge the authority of a  
8 Commissioner to pose questions and seek additional information sufficient to make fully-  
9 informed decisions in ACC rate case proceedings. Yet, as evidenced by APS's answers, or  
10 lack thereof, APS and Pinnacle West refuse to provide substantive responses to a  
11 Commissioner's questions unless they unilaterally deem those questions applicable to the  
12 proceeding.

13 There simply is no authority, and APS has cited none, that a monopoly public service  
14 corporation can impose such unilateral limits on a Commissioner's authority to seek  
15 information. In fact, such a position violates Arizona law. The ACC and its Commissioners  
16 have purposefully broad powers to protect the public interest and to seek all information  
17 necessary, from either a public service corporation or its affiliated company, to make well-  
18 considered decisions regarding a public service corporation's request for a rate increase.  
19 Through statute, the ACC and its members may seek whatever information is necessary to  
20 fulfill its duties, and APS is expected to comply. "Every public service corporation *shall*  
21 *furnish* to the commission, *in the form and detail the commission prescribes*, tabulations,  
22 *computations, annual reports, monthly or periodical reports of earnings and expenses, and all*  
23 *other information required* by it to carry into effect the provisions of this title and *shall make*  
24 *specific answers to questions submitted by the commission.*" A.R.S. § 40-204(A) (emphasis  
25 added). The Commissioners are vested with vast discretion in how to ask questions and what  
26 responses to require.

27 As to questions and requests for information, unless the corporation gives "good and  
28 sufficient reason[s]" for failing to answer a question, the expectation is that the questions will

1 be answered. This extensive authority is consistent with the Arizona constitution as well. The  
2 Arizona constitution states, at Art. 15, § 4:

3       The corporation commission, *and the several members thereof*, shall have  
4 power to inspect and investigate the property, books, papers, business,  
5 methods, and affairs of any corporation whose stock shall be offered for  
6 sale to the public and of any public service corporation doing business  
7 within the state, and for the purpose of the commission, *and of the several*  
8 *members thereof*, shall have the power of a court of general jurisdiction to  
9 enforce the attendance of witnesses and the production of evidence by  
subpoena, attachment, and punishment, which said power shall extend  
throughout the state. Said commission shall have power to take testimony  
under commission or deposition either within or without the state.

10 (emphasis added). Similarly, Art. 15, § 13 requires that “All public service corporations  
11 and corporations whose stock shall be offered for sale to the public shall make such  
12 reports to the corporation commission, under oath, and provide such information  
13 concerning their acts and operations as may be required by law, or by the corporation  
14 commission.” Thus, Commissioner Burns may seek information from both APS and  
15 Pinnacle West, and those entities are required by law to respond substantively and  
16 completely.

17       Adherence and submission to this broad authority is part and parcel of the benefits  
18 conferred upon APS/Pinnacle West in granting it the right to run a monopoly. *Davis v.*  
19 *Corp. Comm’n*, 96 Ariz. 215, 218 (1964) (“The monopoly is tolerated only because it is  
20 to be subject to vigilant and continuous regulation by the Corporation Commission.”).  
21 “As a public service corporation, APS is required by the broad and unrestricted language  
22 of article 15, § 13 of the Arizona Constitution and A.R.S. § 40-204 to make such reports  
23 to the Corporation Commission as the Commission requires.” *Ariz. Pub. Serv. Co. v.*  
24 *Ariz. Corp. Comm’n*, 155 Ariz. 263, 270 (App. 1987) (*opinion approved in part and*  
25 *vacated in part*, 157 Ariz. 532, 760 P.2d 532 (1988) (en banc)). “In return for the benefits  
26 of its monopoly status, APS is subject to the close scrutiny and regulatory power of the  
27 Commission.” *Id.* “The price [APS] pays for its special status is a greater visibility of its  
28 internal workings and a greater degree of interference by the public agency created to

1 monitor it.” *Id.* Thus, APS’s objection that “APS has not included any expense for any  
2 political activity, lobbying, donations or other charitable contributions in its test year  
3 expense, and any expense that may have occurred outside the test year is not relevant” is  
4 without merit. APS Responses to questions 1, 20, 21, 22, 23, 24, 33, 34, 35, 36, 37, 38  
5 and 26, 27, 28, 30 (improperly imposing “test year” limitation on the question and then  
6 refusing to answer the questions)). The Commissioner’s questions do not need to be  
7 arbitrarily limited to the “test year” and doing so would allow a public service  
8 corporation to improperly restrict a commissioner’s ability to protect Arizona consumers.  
9 *Ariz. Corp. Comm. v. Ariz. ex rel. Woods*, 171 Ariz. 286 (1988) (“The Commission was  
10 not designed to protect public service corporations and their management but, rather, was  
11 established to protect our citizens from the rules of speculation, mismanagement, and  
12 abuse of power.”)

13 Moreover, APS and Pinnacle West are hardly ignorant of the full spectrum of  
14 legitimate concerns a Commissioner may have about economic issues that impact a rate  
15 request. They know that the test for relevant areas of inquiry is not simply what cost  
16 items APS has specifically listed as part of its calculations for a given test year. Indeed,  
17 if that were the case the Commission could not even inquire beyond the listed items and  
18 demand proof that such items of cost actually exist, will exist in the future, and have been  
19 accurately calculated from real experience. Consider, for example, a utility whose parent  
20 wants to obtain \$10 per customer per year to underwrite future campaign contributions,  
21 and who includes in its rate calculations purported expense items that it does not actually  
22 expect to experience in future years but which will allow it to obtain the net revenue it  
23 needs for its campaign spending. Under APS’s position, a Commissioner would have to  
24 be satisfied with the answer that: “We did not include campaign spending in our rate  
25 calculation as a reimbursable expense.” In that extreme case, even abject fraud could  
26 never be uncovered.

27 Moreover, APS’s objections are hypocritical. APS has included post-test year  
28 plant expenditures in its rate request. If every bit of information relevant to a rate request



1 involved just actual prior expenses in a test year, APS's request would be facially  
2 improper. APS cannot have it both ways – requesting consideration of costs incurred  
3 outside of the test year but denying the Commissioners any inquiry into facts, expenses or  
4 issues outside of the test year.

5 Further, APS and Pinnacle West are well aware of Commissioner Burns' concerns  
6 over how the substantial amounts Pinnacle West apparently spends on election/campaign  
7 support, political activity, lobbying, marketing, and charitable or civic donations and  
8 support likely impact APS's and Pinnacle West's calculations about the return rate it  
9 infuses in its rate requests. This is a legitimate and central inquiry outside the  
10 reimbursable test year expenses. APS and Pinnacle West have no authority to object to  
11 such inquiries.

12 Similarly, the limitation suggested by APS's objections to questions 1-15, 17-24,  
13 29, 33-38, that a commissioner's questions should relate only to APS and not its affiliated  
14 company is likewise unsupported. The ACC is even granted constitutional authority to  
15 require reports and information from Pinnacle West. Art. 15, § 4 states:

16 The Corporation Commission, and the several members thereof,  
17 shall have power to inspect and investigate the property, books, papers,  
18 business, methods, and affairs of *any corporation whose stock shall be*  
19 *offered for sale to the public* and of any public service corporation doing  
20 business within the State, and for the purpose of the Commission, and of  
21 the several members thereof, shall have the power of a court of general  
22 jurisdiction to enforce the attendance of witnesses and the production of  
evidence by subpoena, attachment, and punishment, which said power shall  
extend throughout the State. Said Commission shall have power to take  
testimony under commission or deposition either within or without the  
State.

23 (Emphasis added.) And, as already stated, Art. 15, § 13 likewise requires corporations,  
24 like Pinnacle West, to "provide such information concerning their acts and operations as  
25 may be required by law, or by the Corporation Commission." As held by our Supreme  
26 Court, these provisions and others grant the ACC and its members' authority to seek  
27 information from corporations acting as holding companies or affiliates of public service  
28

1 corporations – APS in particular. *Ariz. Pub. Serv. Co. v. Ariz. Corp. Comm'n*, 157 Ariz.  
2 532 (1988).

3 APS's and Pinnacle West's position would open gaping avenues for wholesale  
4 fraud on the Commission and the Arizona consumers they are supposed to protect.  
5 Imagine, for instance, the utility whose reimbursable expense and rate of return  
6 calculations are motivated not by actual utility-generation expense forecasts, but whose  
7 parent has a history of cutting such expenses and using revenue generated through their  
8 inclusion in a "test year" for other pre-programmed expenses and operations of the  
9 parent. APS and Pinnacle West demand that the parent's improper manipulations and  
10 false rate inflation remain invisible to the Commission and Arizona consumers. To do its  
11 job protecting Arizona consumers and limiting rates of monopoly utilities appropriately,  
12 the Commission must have access to the parent corporation records and witnesses. Thus,  
13 APS's objection that "Pinnacle West is not a party to this proceeding, therefore  
14 information related to Pinnacle West is not relevant" is unsupported and willfully  
15 contravenes the Arizona law.

16 **II. The Cases Cited by APS Do Not Justify an Arbitrary Limitation on the**  
17 **Information the ACC Can Request During a Rate Hearing.**

18 In its objection, APS cites several cases that purportedly support its arbitrary  
19 limitations on information the ACC and Commissioner Burns may seek. Those cases,  
20 however, require the opposite result. In *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*,  
21 the Arizona Supreme Court affirmed the enforceability of the ACC's request to obtain  
22 information from the public service corporation regarding its service of non-Arizona  
23 residents, information that was within federal, not ACC jurisdiction. In doing so, the  
24 Court stated, "utility rates are set to allow a recovery for all reasonable expenses, plus a  
25 return on investment (rate base)," thus "Arizona users should not be required to subsidize  
26 capital investment needed to provide electricity to Southern California Edison through  
27 the FERC." *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 244-45  
28 (1982). Similarly, where information is sought that goes beyond just the rates to Arizona  
consumers, and extends into other areas that Arizona consumers would appear to be

1 subsidizing, like lobbying expenses, the ACC should have access to such information in a  
2 rate hearing. More, contrary to APS's contention, *Tucson Elec. Power Co.* does not limit  
3 the ACC to test year information. Rather, in dicta the court references an agreement  
4 between the ACC and Tucson Elec. Power Co. to review a specific year, 1978, as the test  
5 year. *Id.* at 246. Nothing states that the ACC is restricted from seeking information about  
6 other years, particularly if the legitimacy of the increase request and the hearing may be  
7 impacted. In fact, it is routine practice for parties to examine expenditures made in  
8 previous test years to assign an appropriate monetary amount to expenditures that are  
9 considered "anomalies" in the company's selected test year.

10 Similarly, *Residential Util. Consumer Office v. Ariz. Corp. Comm'n*, is  
11 inapplicable. In that case, the court determined whether the ACC had authority to grant a  
12 public service corporation's application for a surcharge outside of an emergency situation  
13 and without a full rate hearing. In finding that the ACC may not grant a rate increase  
14 outside of full hearing absent an emergency situation, a bond posted by the utility  
15 guaranteeing a refund to customers, and after valuation of the utility's property, the court  
16 specifically noted that "[t]he [commission] staff recommended the Commission reject the  
17 surcharge application and conduct a full rate hearing to consider the changes in [the  
18 utility company's] rate base, operating expense, revenue, and *other relevant factors*." *Id.*  
19 at 589-590. Notably, the court did not indicate that the staff's recommendation,  
20 particularly as to requesting other relevant information was inappropriate or improper.

21 APS also cites *In re Ariz. Pub. Serv. Co.* for the proposition that all lobbying costs  
22 need to be provided through itemized list; thus, APS contends that because it was ordered  
23 in a different case in 2007 that it could not include lobbying expenses in its costs, APS  
24 has followed that requirement consistently since then and excluded lobbying costs.  
25 Again, this is a short-sighted argument. To the extent that lobbying costs impact in any  
26 way APS's or Pinnacle West's thinking about how to structure rate requests, what  
27 reductions it is willing to make to settle rate cases, and especially what return rates it  
28 wants to target, the lobbying expense information is directly relevant.



1       Moreover, the case APS cites shows it has not been above submitting erroneous  
2       expense claims. In that case, APS tried to hide almost \$2 million in lobbying costs in a  
3       calculation for operating expenses. In response, the staff recommended that APS be  
4       precluded from using lobbying expenses as operating expenses. The hearing judge  
5       specifically stated, “[w]e agree with Staff that it is disturbing that APS was not  
6       complying with [Uniform System of Accounts] in recording its lobbying expenses.” *In re*  
7       *Ariz. Pub. Serv. Co.*, 2007 Ariz. PUC LEXIS 126, \*69-70, 258 P.U.R.4th 353, 258  
8       P.U.R.4th 353 (ACC June 28, 2007). Thus, APS has previously adjusted its income in a  
9       manner to hide improper expenses with the hope of obtaining ratepayer recovery for non-  
10      recoverable items such as lobbying.

11       Finally, *In re Ariz. Pub. Serv. Co.*, is unrelated to election expenditures, marketing,  
12      charitable contribution, or civic event support matters, all of which are central in this rate  
13      case.

### 14      **III. APS and Pinnacle West Ignore the Critical Disqualification Issues.**

15       APS and Pinnacle West have known for some time that questions concerning their  
16      contributions or spending in support of Commissioner elections raise substantial and  
17      serious bias and disqualification issues. Whether a Commissioner feels beholden to APS  
18      or its parent is of no consequence – the end result would be the exact same bias in favor  
19      of APS rate requests. This is especially true where the companies are so inseparable as to  
20      board members and key executives. Thus, APS and Pinnacle West know that legitimate  
21      concerns exist over whether their spending has disqualified sitting Commissioners in this  
22      case.

23       It is justly troubling, then, that APS and Pinnacle West have refused to answer the  
24      questions that would allow investigation into the disqualification issue. Indeed, the  
25      automatic assumption when one suspected of wielding improper influence tries to shut  
26      down any inquiry into that suspicion is that they may well have something serious to  
27      hide. Indeed, one could logically assume that if a company spends millions and millions  
28      of dollars to bias its regulators, it might be reluctant to lose what it bought by uncovering

1 its dealings. Yet, that is not the way our constitution and laws work. They are designed  
2 to compel disclosure on such items, to instill supreme confidence in the people of  
3 Arizona that the ACC and its elected Commissioners are acting without risk of bias or  
4 influence by APS or Pinnacle West, and, where the monopoly is unwilling to yield  
5 disclosure of its activities, to force such disclosure. The fact that APS and Pinnacle West  
6 would so sweepingly deny inquiry into these issues speaks volumes about why such  
7 inquiry is both justified and necessary.

8 **IV. Pinnacle West and APS Can, and Must, Offer More Information and**  
9 **Witnesses for Examination.**

10 In addition to being subject to the jurisdiction and investigatory authorities of each  
11 Commissioner as outlined above, Pinnacle West is not a stranger to this proceeding.  
12 Indeed, various matters filed on behalf of APS in this case were filed by Pinnacle West  
13 Capital Corporation attorneys. Indeed, the Jointly-Developed Proposed Witness and  
14 Hearing Schedule filed in this matter prominently displays that the four attorneys filing it  
15 are from "Pinnacle West Capital Corporation". As noted in Commissioner Burns' recent  
16 motion seeking to suspend this rate case and initiate an investigation into and  
17 determination of the disqualification of commissioners in this matter, APS and Pinnacle  
18 West share many identical, overlapping senior officers and directors. There is no  
19 question that the two entities do not operate separately, and Pinnacle West even admits in  
20 public filings that its revenue comes almost exclusively from APS. Thus, APS's cavalier  
21 statement that Pinnacle West is not a party to this proceeding denies the reality of the  
22 symbiotic/intertwined relationship of the two companies and the persons making key  
23 decisions for them.

24 Importantly, APS and Pinnacle West have also elected to file answers which freely  
25 admit that the answering witness "cannot speak for Pinnacle West, nor do I have data on  
26 Pinnacle West expenses." Moreover, she contends that she "has no knowledge"  
27 regarding other matters for which information was requested. Thus, APS and Pinnacle  
28 West knowingly offered answers from a witness they knew had no knowledge of

1 relevant, requested matters. It should have been easy for APS to have supplied witnesses  
2 with the information requested. Having made no attempt to do so, the answers must be  
3 viewed as an intentional refusal to comply with a Commissioner's request for relevant  
4 information, subject to all appropriate enforcement options. The Commission should  
5 consider such purposeful evasion of the requests of a Commissioner to negatively impact  
6 the credibility and reliability of virtually all representations and testimony offered or  
7 provided by APS in this matter.

8 **V. Conclusion**

9 For the foregoing reasons, Commissioner Burns provides this notice that the  
10 failure of APS and Pinnacle West to answer his questions, their failure to provide the  
11 witnesses and testimony he requires, and their attempt to instead thwart the investigation  
12 of issues central to their rate request and the disqualification issues provides more than  
13 enough proof that the relief Commissioner Burns has demanded in his two Motions be  
14 immediately ordered by the Administrative Law Judge.

15 DATED this 12th day of May, 2017.

16  
17 BASKIN RICHARDS PLC

18 

19 William A. Richards

20 Alan Baskin

21 2901 North Central Avenue, Suite 1150

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23 *Attorneys for Commissioner Robert*  
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25 ORIGINAL and fifteen (15) copies  
26 of the foregoing filed in Docket Nos.  
27 E-01345A-16-0036 and E-01345A-16-0123  
28 this 12<sup>th</sup> day of May, 2017 with:



### CERTIFICATION OF SERVICE

On this 12<sup>th</sup> day of May, 2017, the foregoing document was filed with Docket Control as correspondence from Commissioner Bob Burns and copies of the following who have not consented to email were mailed on behalf of the Commissioner to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commissioner's eDocket program will automatically email a link of the foregoing document to the following who have consented to email service.

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